

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ANA MELGARES,

Plaintiff, Case No.:

vs.

PLAINTIFF'S COMPLAINT

CAPITAL ONE BANK (USA), N.A.,

Defendant.

COMPLAINT

ANA MELGARES ("Plaintiff"), by her attorney, alleges the following against
CAPITAL ONE BANK (USA), N.A. ("Defendant"):

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Defendant conducts business in the state of Washington, and therefore, personal jurisdiction is established.

PLAINTIFF'S COMPLAINT - 1

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1 3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See,
2 *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740 (2012), holding that federal and state
3 courts have concurrent jurisdiction over private suits arising under the TCPA.
4

5 4. Venue is proper in the United States District Court for the Western District of Washington
6 pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a substantial
7 part of the events or omissions giving rise to the herein claims occurred, or a substantial part
8 of property that is the subject of the action is situated within this District.
9

10 PARTIES

11 5. Plaintiff is a natural person residing in the county of King in the city of Shoreline,
12 Washington and is otherwise *sui juris*.
13

14 6. Defendant is a Virginia corporation headquartered in McLean, Virginia and doing business
15 in the state of Washington.
16

17 7. At all times relevant to this Complaint, Defendant has acted through its agents, employees,
18 officers, members, directors, heir, successors, assigns, principals, trustees, sureties, subrogees,
19 representatives and insurers.
20

21 FACTUAL ALLEGATIONS

22 8. Defendant is a "person" as defined by 47 U.S.C. § 153 (39).
23

24 9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged
25 debts owed by Plaintiff.
26

27 10. Defendant placed collection calls to Plaintiff's cellular telephone at phone number (425)
28 213-74XX.
29

1 11. Defendant placed collection calls to Plaintiff from phone numbers including, but not
2 limited to, (800) 955-6600.

3
4 12. Per its prior business practices, Defendant's calls were placed with an automated telephone
5 dialing system ("auto-dialer").

6 13. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a)
7 (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly owed
8 by Plaintiff, ANA MELGARES.
9

10 14. Defendant's calls constituted calls that were not for emergency purposes as defined by 47
11 U.S.C. § 227(b)(1)(A).
12

13 15. Defendant's calls were placed to a telephone number assigned to a cellular telephone
14 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).
15

16 16. Defendant never received Plaintiff's "prior express consent" to receive calls using an
17 automatic telephone dialing system or an artificial or prerecorded voice on her cellular
18 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).
19

20 17. On March 22, 2018, at or around 2:35 p. m. Pacific Standard Time, Plaintiff spoke with
21 Defendant's female representative at phone number (800) 955-6600 and requested that
22 Defendant cease calling Plaintiff's cellular phone.

23 18. During the conversation, Plaintiff gave Defendant both her name, social security number,
24 and date of birth to assist Defendant in accessing her account before asking Defendant to stop
25 calling her cell phone regarding all her accounts.
26
27

1 19. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular telephone
2 and/or to receive Defendant's calls using an automatic telephone dialing system in her
3 conversation with Defendant's representative on March 22, 2018.
4

5 20. Despite Plaintiff's request to cease, Defendant continued to place collection calls to
6 Plaintiff through July 14, 2018.
7

8 21. Despite Plaintiff's request that Defendant cease placing automated collection calls,
9 Defendant placed at least Seventy-Eight (78) automated calls to Plaintiff's cell phone.
10

11 **FIRST CAUSE OF ACTION**
12 **NEGLIGENT VIOLATIONS OF THE TELEPHONE**
13 **CONSUMER PROTECTION ACT 47 U.S.C. § 227**

14 22. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
15 forth above at Paragraphs 1-21.
16

17 23. The foregoing acts and omissions of Defendant constitute numerous and multiple
18 negligent violations of the TCPA, including but not limited to each and every one of the above
19 cited provisions of 47 U.S.C. § 227 et seq.
20

21 24. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is
22 entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to
23 47 U.S.C. §227(b)(3)(B).
24

25 25. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.
26
27
28

29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

33. Actual damages and compensatory damages according to proof at time of trial;

ON ALL CAUSES OF ACTION

34. Costs and reasonable attorneys' fees;

35. Any other relief that this Honorable Court deems appropriate.

JURY TRIAL DEMAND

36. Plaintiff demands a jury trial on all issues so triable.

Dated: November 26, 2018

RESPECTFULLY SUBMITTED,

FELTMAN EWING, P.S.

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